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IN THE

Supreme Court of the United States

October Term, 1971
No. 71-544

SALYER LAND COMPANY, a California corporation,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,
Respondent,

KINGS COUNTY DEVELOPMENT COMPANY, a California corporation,
Real Party in Interest.

Brief of Real Party in Interest in Opposition to Petition for a Writ of Certiorari.

Question Presented for Review.

Why cannot a state court construe a lease of farmland within the state, when the issues are solely those of ordinary contract interpretation and require no expertise in administering the technicalities of federal farm programs?

Statement of the Case.

Plaintiff and real party in interest, Kings County Development Company ("KCD"), owns farmland in Kings County, California. KCD has leased some 5,000 acres to Defendant/Petitioner Salyer Land Com-

pany ("Salyer"), a large corporate farming concern. Salyer farms KCD's land, together with about 35,000 additional acres. The lease is for 15 years, beginning with 1966. It was bargained at arm's length over six or more months.*

The parties disagree chiefly over how much rent Salyer owes under an arithmetic formula in the lease. The formula ties the amount of rent to the price of cotton. There are two subsidiary issues. The first is whether *in fact* the cotton allotment for KCD's land has been increased since the date of the lease. If so, KCD would be entitled, under the lease, to $80.19 for each acre of such increase. The second subsidiary issue is whether, despite a provision that Salyer is to bear all expenses of producing crops on the land, Salyer can charge KCD for payments Salyer is required by law to make to the Cotton Producers' Institute on each bale of cotton produced on the land.

The case is set for trial January 25, 1972. The arguments raised in the Petition have been made to three separate courts below. Neither the trial court, any of the Justices of the California Court of Appeal who

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*The facts referred to appear in the declaration and affidavits filed in connection with Salyer's motion below for summary judgment. The trial court denied the motion in September 1970. The same facts were before the California Court of Appeal when it summarily denied Salyer's petition for a writ of prohibition in June 1971 and before the Supreme Court of California when it summarily denied a hearing in July 1971.

considered the matter, nor any of the Justices of the California Supreme Court has recorded any agreement with Salyer's position.

Summary of Argument.

The case involves only the interpretation of a private lease. The issues are no different from the kind state trial courts regularly decide. The state court has not and will not decide any federal question of substance and there is no basis for certiorari under this Court's Rule 19.

The petition incorrectly portrays plaintiff, real party in interest, as asking the state court to decide what cotton crop allotments should be and to administer federal farm subsidy programs and policies. In truth, the main issue is how rent is to be calculated under an arithmetic formula in a privately negotiated lease. The state court is not asked to decide what anyone's cotton allotment or crop subsidy ought to be or otherwise to involve itself in federal farm programs. This suit seeks only to enforce the agreement of the parties as to how, between them, to calculate the rent one should pay the other.

The state court is not asked to judge the legality or merit of, and plaintiff has no dispute with, any federal administrative or legislative decision. The administrative remedies Petitioner pictures as exclusive are not even applicable, for they are limited by their own terms to such disputes.

ARGUMENT.

I.

The Case Raises Straightforward Issues of Contract Interpretation.

This case is simply about a contract and how it is to be construed. The trier needs no expertise in the administration of federal farm programs or policies.

A. The Chief Issue: The Proper Calculation of the Annual Rent Under the Terms of the Lease.

The lease provides two methods of calculating rent. Each is expressed as an arithmetic formula. KCD elects the method for each year.

The first method specifies a base annual rent of $220,000, adjusted up or down according to changes in the price of cotton received by Salyer. The second method provides for a money rent equal to 25% of the total price Salyer receives from all crops it produces on KCD's land.

The lease expresses the first method as follows:

> "A cash rental of $220,000.00 each year . . . based on the average *price of cotton received by SALYER* for the years 1962, 1963, and 1964, which said average price was 34.21 cents per pound.
>
> ". . .
>
> "In the event that the *price of cotton received by SALYER* during any year . . . [differs from] 34.21 cents per pound, the annual cash rental . . . shall be increased or decreased in the same proportion as 34.21 cents bears to the *per pound price of cotton received by SALYER* during said year." (Emphasis added.)

The alternative provision is for:

> ". . . [T]wenty-five (25%) of the *total price received by SALYER* from all crops produced on the Lands during such year." (Emphasis added.)

The major issue is whether the "price" of cotton "received by Salyer" includes cotton price support payments received by Salyer. In other words, does the lease mean that price support payments received by Salyer for the specific purpose of raising the price of cotton are part of the "price" of cotton in calculating the rent?

Cotton price support payments have been so many cents per pound of cotton produced per year, depending upon the price at which the government has sought to peg cotton. KCD contends that price support payments should be included in "price" in calculating the rent; Salyer contends not. The amounts of these payments are undisputed.

The petition pictures KCD as seeking to have Salyer pay over a portion of the cotton subsidies received by Salyer (Petition, pp 2, 4). KCD alleges no such thing. The issue is whether price support payments (which are not all the cotton subsidies received by Salyer) are to be included in the "price" of cotton "received by Salyer" for the purpose of making the purely arithmetic calculation called for by the lease.

Throughout negotiations for the lease, KCD's representatives sought a guaranteed minimum cash rent, referring habitually to a "net-net" or "net-net-net" lease. Handwritten notes by Salyer's president, produced during discovery, contain numerous corroborative references: "Pay KCD cash rental of $220,000 on a Net

Net basis"; "Cash rental Net-Net to KCD $220,000 year"; "Cash rentals Net Net to KCD"; and "Net Net basis to K.C.D."

Because the proposed lease term was long, KCD also sought a hedge against inflation or deflation. Salyer told KCD frequently during the negotiations that it could afford to pay $220,000 in any year which was as good, measured in terms of cotton, as the average of the then preceding three years (1962-64). On July 1, 1965, Salyer proposed a sliding formula tying the rent to changes in the price of cotton:

> "2. The rental would be $220,000 per year.
> . . .
> "
> . . .
>
> "6. There would be a clause providing protection against both inflation and deflation along the following lines: Should the Kings County Development Company elect . . ., the amount of rent would be determined by using the average price received by the Salyer Land Company based on the years of 1962, 1963 and 1964, which is 34.21¢ a pound. . . . [T]he cash rent would . . . vary up or down from the $220,000, as follows:
>
> 1. $220,000 at 34.21 = $223,215.43 at 34.71 average price
> 2. $220,000 at 34.21 = $226,430.66 at 35.21 average price
> 3. $220,000 at 34.21 = $216,784.56 at 33.71 average price
> 4. $220,000 at 34.21 = $213,569.13 at 33.21 average price."

This formula was written into the lease without material change.

Until 1966, cotton subsidies were so structured that farmers received the benefit of them through higher prices paid by cotton processors for raw cotton. Thus, during 1962-64, whose average Salyer chose as the base for the formula, the prices farmers received from processors reflected cotton subsidies and were higher by reason of government subsidies than if those prices had been determined solely by supply and demand. Hence, the "average price" Salyer received for cotton during 1962-64 included government subsidies.

Starting with 1966, the first year of the lease, price support payments were paid directly to cotton farmers. Beginning with the first year of the lease, therefore, the farmer, upon selling cotton to the processor, received only the unsubsidized or "true market" price, whereas in 1962-64 the price the processor paid the farmer reflected government subsidies.

This procedural change did not affect the farmer's total receipts per pound for cotton. In total, the farmer continued to receive for each pound of cotton a sum reflecting both the unsubsidized "true market" price and the government subsidy, just as in previous years.

To exclude price support payments from "the price of cotton received by Salyer" under the lease formula would be inconsistent with Salyer's expressed intent to pay $220,000 in any year which was as good, measured in terms of cotton, as the 1962-64 average. For example, Salyer would do as well in any year from 1966 on in which the unsubsidized "true market" price was $.30 per pound and the direct price support payment $.0421 per pound, for a total of $.3421 per pound, as it had done in 1962-64, when the average price paid by cotton processors, which re-

flected price support subsidies, was $.3421 per pound. KCD could realize a $220,000 rent in any year which was as good for Salyer, measured in terms of cotton, as the average of 1962-64 only by including in the "price received by Salyer" for cotton the government's cotton price support payments.

Thus, the issue is what the parties intended, under the objective factual circumstances, when they contracted using the words "the price of cotton received by Salyer." Such an issue is purely one of common law contract interpretation. It requires no determination respecting any federal farm policy or program.

That the issue is solely contractual intent and in no way the administration of federal farm programs is highlighted by Salyer's reliance upon ¶ 28 of the lease (Petition, pp. 4-5, 11) to avoid its expressed intent to pay $220,000 in any year which was as good, expressed in terms of cotton, as the 1962-64 average. At a meeting in Los Angeles just before the lease was put in final form, Salyer proposed a new provision, which became ¶ 28:

> "SALYER shall be entitled to all government payments attributable to the Lands under present or future farm programs. Should any such payment be forwarded to KCD by any governmental office or agency, the check or draft representing such payment shall be promptly endorsed by KCD and forwarded to SALYER."

The Petition twice asserts that this provision was included because Salyer absorbed an allotment cut under the 1965 farm bill (Petition, pp. 5, 11). If so, the issue would still be one of contract interpretation de-

pendent upon the expressed intent of the parties. The assertion, however, is without basis.

The only record facts as to the intent with which the new paragraph became part of the lease reveal a classic question of common law contract interpretation. At the meeting, KCD asked the paragraph's purpose. Salyer's counsel replied that it was to spell out what would happen if KCD were to receive a subsidy check directly from the government. He stated that Salyer wanted to be sure KCD would endorse and forward the check to Salyer. No one said that the paragraph had anything to do with calculating rent. KCD had learned earlier that owners who leased their land to farmer operators sometimes received subsidy checks meant for the operators because the government assumed that the owner was farming the land. KCD thus accepted the paragraph.

B. The Minor Issues: The Size of KCD's Cotton Allotment and the $1 a Bale Cotton Research Contribution.

The Petition treats two minor issues as central, presumably because they can be more readily be made to look resolvable only by administrative expertise. In unsuccessfully moving for summary judgment last year, however, Salyer told the trial court that the "only controversy of any substance" concerned the rent formula. Salyer considered the other issues so minor, in fact, that its motion papers offered to concede them in return for summary judgment on the main issue.

Even if—as is not the case—these issues raised questions reserved for administrative agencies, the major issue would remain for state court determination as a matter of contract law. In any event, the minor issues also present only common law contract questions.

1. *The Size of KCD's Cotton Allotment.*

The lease recites that as of its signing the land had a 1015.5 acre cotton allotment. This acreage was the maximum which could be planted to cotton with respect to KCD's land and still qualify the farmer for cotton subsidies. The parties obviously anticipated that the allotment might change, for they provided in the lease that under certain circumstances KCD would receive increases in rent for increases in its cotton allotment.

KCD contends that *in fact* its cotton allotment *has* increased and was greater during the years now in question (1966-70) than 1015.5 acres. Salyer argues that KCD is asking the state court to determine the appropriate size of the allotment and that such a determination is for the technical expertise of administrative agencies under federal farm laws.

The issue presented by KCD, however, is whether, as a matter of objectively provable fact, KCD's allotment has increased. The Petition is less than candid in implying that KCD wants the state court to determine what its cotton allotment *should be* or to supplant or review any administrative decision. In response to Salyer's summary judgment motion last year, KCD filed a declaration by the manager in charge of its audits at Price Waterhouse & Co. He declared that while examining Salyer's accounts (as provided for in the lease), he was provided by Salyer with one of its internal accounting worksheets. The worksheet stated that KCD's cotton allotment had increased for 1966 "from 1015.5 acres to 1055.0 acres" and even showed Salyer's own calculation of increased rent due KCD by reason thereof. He further stated that KCD's 1966 cotton allotment, as shown in records of the Agricultural

Stabilization & Conservation Service office for Kings County, which he had personally inspected, was 1,055 acres.

Plainly, KCD is not asking the state court to set allotments. Salyer's argument that the size of cotton allotments is for federal determination is thus immaterial. KCD contends that its allotment is objectively provable from existing records.

Salyer's further argument that the trial court cannot calculate the rent owing without determining the allotment (Petition, p. 9) is a diversion. If KCD proves *as a fact* that its allotment *has* increased, the increase in rent thereby will be readily determinable from the plain language of the lease. If KCD fails to prove its *factual* contention, the rent otherwise owing will be unaffected. Nowhere must the trial court determine whether the allotment *should be* increased or by how much.

2. *The $1 Per Bale Contribution to the Cotton Producers Institute.*

The second minor issue is whether *under the lease* Salyer can charge to KCD the expense of Salyer's contributions of $1 per bale of cotton to the Cotton Producers Institute. Salyer contends that federal law compels the expense and that KCD's remedy was to demand a refund under federal law.*

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*In this Court, apparently perceiving the weakness of its argument, Salyer has muted its direct assertion below that the payments are "mandatory" by now saying that they are "voluntary" *to the extent* that they are refundable (Petition, p. 6). That is the same as saying that the payments are compulsory, subject to the possibility of later recovering them. In the California Supreme Court, Salyer asserted that the expense was compelled under penalty (Petition for Hearing by the California Supreme Court, p. 13). Salyer told the California Court of Appeal the same thing (Petition for Writ of Prohibition, p. 26).

The petition neglects to parse the cited statute and to reveal what the lease says. The "remedy" is contained in 7 U.S.C. § 2110:

> ". . . [A]ny cotton producer against *whose cotton* any assessment is made and collected *from him* under the authority of this chapter . . . shall have the right to demand and receive from the Cotton Board a refund. . . ." (Emphasis added.)

To qualify for a refund under this language one must own the cotton and be the person who pays the contribution when it is assessed. The cotton Salyer produces on KCD's land, and then markets, belongs to Salyer. The lease entitles KCD only to money rent, not to any crops. The contribution is "collected from" Salyer. KCD feels the pinch only because Salyer later tries to pass the expense on.

In any event, Salyer's premise—that making the contributions is mandatory—defeats the argument. If mandatory, they are an expense of producing cotton. Paragraph 3 of the lease provides:

> "*All expenses of producing the crops* on the Lands, including, *but without limiting the generality of the foregoing,* power, fuel, fertilizer, seed, weed, pest and rodent control . . . and all processing, storage and transportation charges chargeable to crops produced on the Lands *shall be borne by Salyer.*" (Emphasis added.)

II.

The Federal Farm Statutes Do Not Provide Remedies or Regulations for the Matters in Dispute.

As a large corporate farming concern, Salyer is well versed in federal farm laws. Therefore, the Court can safely assume that the Petition cites all arguably relevant authorities. The cited statutory administrative remedies are inoperative by their own terms in a dispute over the meaning of a private lease. It is not surprising that the Petition fails to cite any case applying those remedies to such a dispute.

The assertedly exclusive remedies are contained in 7 U.S.C. §§1363, 1365, 1367, 1444(d)(10) and 2111. A seriatim review reveals their inapplicability.

Section 1363 provides for initial committee review *of a farm marketing quota.* By its own terms, §1363 applies only to a "farmer who *is dissatisfied* with his farm marketing quota" (emphasis added). KCD is not dissatisfied with any quota.

Section 1365 provides for court review of the committee review provided for in § 1363. Section 1365 is immaterial for the same reason as §1363: It applies only "[i]f the farmer is *dissatisfied* with the determination of the review committee" (emphasis added).

Section 1367 provides, in pertinent part:

> ". . . [T]he jurisdiction conferred *by this part* to review the legal validity of a determination made *by a review committee pursuant to this part* shall be exclusive. No court of the United States or of

> any State shall have jurisdiction to pass upon the legal validity of any *such determination* except in a proceeding under this part." (Emphasis added.)

Obviously, this section's "exclusivity" operates only with respect to the remedies in §§1363 and 1365, which in turn operate only when a farmer "is dissatisfied" with a marketing quota and disputes it. As KCD is not in that category, §1367 is irrelevant.

The next administrative "remedy", §1444(d)(10), provides in pertinent part:

> "The Secretary shall provide adequate safeguards to protect *the interests of tenants and sharecroppers,* including provision for sharing diversion payments on a fair and equitable basis under this subsection. The Secretary shall provide for the sharing of price support payments among *producers on the farm* on the basis of their *respective shares* in the cotton crop produced on the farm, or the proceeds therefrom. . . ." (Emphasis added.)

Salyer's argument apparently is, as it was below (Pet. for Hrg. by the Calif. Supreme Court, p. 5), that Congress by this language required that "the Secretary of Agriculture review and approve such things as private agreements" in which rents may be affected by price support levels. Had Congress so intended, it would have said so scrutably. Salyer's reading inserts an altogether unexpressed Congressional intent.

In any event, §1444(d)(10) is inapplicable for other separate and independent reasons.

First, KCD is not a "*producer on the farm*", which is prerequisite to the operation of §1444(d)(10). The context shows that the qualification, "on the farm",

is not to be disregarded. Read as a whole, the section was obviously intended to cover sharecroppers or co-tenants who, in common with others, physically farm a given parcel. KCD is not in that category.

Second, by its terms the section covers only a direct sharing, a dividing up as such, of price support payments between persons having shares in the cotton crop or its proceeds. Direct sharing is not involved in this case. The issue is how to arrive at the "price of cotton received by Salyer" in order to work the arithmetic formula in the lease and determine the rent.

Third, Salyer's own argument denies the applicability of § 1444(d)(10). If the statute applied in the present context, KCD would have had a right to share directly in price support payments. Yet Salyer argues that KCD bargained away any such right by acceding to paragraph 28, discussed *supra*. Thus, the essence of Salyer's argument is that the parties could and did privately contract with respect to price support payments. By so arguing, Salyer itself denies that §1444 (d)(10) has any role in this case.

The last statutory remedy, that of §2111, applies only to the $1 per bale contribution. Therefore, even if applicable, and it is not, it would reach only a minor issue. In pertinent part, §2111 provides:

> "(a) Any person . . . may file a written petition . . . that [the $1 per bale contribution] *is not in accordance with law*. . . . He shall thereupon be given . . . a hearirg . . . After such hearing, the Secretary shall make a ruling. . . .
>
> "(b) The district courts of the United States . . . are hereby vested with jurisdiction to review such ruling. . . ." (Emphasis added.)

The section is self-evidently not applicable. KCD does not maintain that the $1 per bale obligation "is not in accordance with law". The complaint questions not the legality of the government's requiring the contribution, but the propriety, *under the lease,* of Salyer's charging the expense to KCD.

III.

The Federal Farm Statutes Evidence No Congressional Intent to Preclude State Court Determination of Contractual Disputes of the Sort Here Presented.

The Congressional intent expressed in the statutes Salyer cites is plainly confined to promoting conservation, maximizing farm income and controlling crop surpluses by regulating agricultural production and marketing. 7 U.S.C. §§1282 and 1341. If Congress had ever expressed any intent to affect private contractual disputes having no impact upon such regulation, the Petition would certainly have quoted it.

Unaided by the statutes themselves, the Petition offers three cases. None is in point.

From the first case, *Jilka v. Saline County, Kansas,* 330 Fed.2d 73 (10th Cir. 1964), the Petition quotes language about the exclusivity of the statutory review procedure (Petition, pp. 7-8), but neglects to note that the dispute was not between two private parties over the meaning of a contract with respect to private property. The dispute was between farmers and an administrative agency over a decision of the agency. The statutory review procedure was operative precisely for that reason. KCD's dispute, on the other hand, is not with the decision of any agency and is therefore outside the statutory ambit.

The second case, *Allen v. David,* 334 Fed.2d 592 (5th Cir. 1964), was likewise a dispute between farmers and the local administrative agency, which had cancelled the farmers' rice acreage allotments. In the case at bar, neither of two private parties asserts dissatisfaction with any administrative action. By highly selective quotation, the case can be made to look as though it teaches that the administrative review provisions in the federal farm laws are exclusive in all disputes involving farmers (Petition, p. 8). In fairness, however, the Court should be informed of the sentence immediately preceding the quotation in the Petition:

> "There are no personal rights of property created in the plaintiffs by the Act which would allow them to recover in a suit against governmental functionaries." (334 Fed.2d at 599.)

This ruling helps make KCD's point. Federal farm legislation creates no personal property rights for which a private citizen can sue governmental functionaries. Logically then, neither does it purport to affect the sort of personal property rights as between private parties which are involved in this lease dispute.

The third case, *Weir v. United States,* 310 Fed.2d 149 (8th Cir. 1962), was an action by the United States against a rice producer to recover a penalty for raising more rice than the producer's farm marketing quota allowed. The language cited (Petition, p. 17) only confirms what is not in dispute in the case at bar: The statutory scheme establishes the exclusive means by which a farmer dissatisfied with a crop marketing quota can attack the administrative decision. Like the two other cited cases, *Weir* says nothing, even tangentially, about a dispute between private parties

over a private contract not involving any dissatisfaction with any administrative decision.

In *Fulford v. Forman,* 245 F.2d 145 (5th Cir. 1957), Congressional intent was described as follows:

> "Of course, the heart of the Act is the elimination of excessive supplies of cotton, 7 U.S.C.A. § 1341, through a detailed scheme for regulating production. 'The framework of the Act itself, both as originally passed and as amended, and the reports of the congressional committees that drafted it, show a prime purpose to limit national and individual farm production and marketing to the quotas allotted * * *,' Rodgers v. United States, 332 U.S. 371, 375. . . . And control of '* * * total supply, upon which the whole statutory plan is based, depends upon control of individual supply,' Wickard v. Filburn, 317 U.S. 111, 130. . . ." (245 F. 2d at 149-50.)

This Congressional intent has nothing to do with how landlords and tenants calculate rent in leases. There is no hint in such intent that state courts are to be at all inhibited in exercising their traditional jurisdiction over private contractual disputes between their own domiciliaries simply because farmland is involved. As a state court said in *Duncan v. Black,* 324 S.W.2d 483 (Mo. Ct. of App. 1959), in ruling upon a private contract made with reference to a cotton allotment:

> "The purpose and general scheme of the [Agricultural Adjustment] Act is to accomplish a national public benefit in controlling surplus and consequent abnormal prices by limiting production. . . ." (324 S.W.2d at 485.)

KCD's suit in no way encroaches upon such a purpose or scheme.

IV.

In the Absence of Administrative Remedies, KCD's Case Is Properly Before the State Court.

Salyer asserts that California law requires exhaustion of administrative remedies (Petition, p. 7). Surely the California Supreme Court and the California Court of Appeal did not summarily refuse Salyer's petitions below in ignorance of their own prior decisions.

Thus, in *County of Alpine v. County of Tuolumne,* 49 Cal. 2d 787 (1958), a county sought judicial determination of boundaries without seeking an administrative remedy which was inapplicable by its terms. The California Supreme Court said:

> "Defendants rely on the established rules that 'where an administrative remedy is provided by statute, relief must be sought before the administrative body and this remedy exhausted before the courts will act' [citation omitted], and that 'it lies within the power of the administrative agency to determine in the first instance, and before judicial relief may be obtained, whether a given controversy falls within the statutory grant of jurisdiction' [citation omitted]. *But these rules are inapplicable where, as here, the agency is given no jurisdiction to make a judicial determination of the type involved.*" (49 Cal. 2d at p. 798) (Emphasis added.)

In *MacLeod v. City of Los Altos,* 182 Cal. App. 2d 364 (1960), the court enjoined enforcement of a city ordinance which regulated business solicitation without a permit and was plainly intended to apply to sales of

goods. Plaintiffs proposed to solicit political contributions. The court said:

> "But, say appellants, plaintiffs did not exhaust their administrative remedy under section 9, by applying for a permit. The short answer is that, because the ordinance does not apply to plaintiffs' activities, the administrative remedy set up by it has no application to them." (182 Cal. App. 2d at 369.)

V.

Conclusion.

The case at bar in no way disputes or interferes with any order, act or authority of any federal officer or agency. The case involves only a controversy between two private parties with respect to contractual rights in private property. The petition therefore should be denied.

Respectfully submitted,

HOMER I. MITCHELL,
DONALD M. WESSLING,
Attorneys for Plaintiff and Real Party in Interest Kings County Development Company.

O'MELVENY & MYERS,
Of Counsel.